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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,486	11/25/2003	Roderick Komar	KOMAR02	2761
7590	12/06/2005			
Thomas Kahrl Box 1177 West Falmouth, MA 02574			EXAMINER PETRAVICK, MEREDITH C	
			ART UNIT	PAPER NUMBER
			3671	
DATE MAILED: 12/06/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/721,486

Applicant(s)

KOMAR, RODERICK

Examiner

Meredith C. Petravick

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 9-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 9, the phrase “providing means for conveying fruit by conveyor means” is unclear as to scope. The portion “providing means for conveying” seem to be redundant with “conveyor means” and it is unclear why Applicant has included both limitations. This makes the scope of this limitation unclear.

Also regarding claim 9, the phrase “the stripped fruit, comprising cranberries” make the scope of the claim unclear. Previously, Applicant has only made reference to cranberries being harvested. The above limitation implied that there other fruit than cranberries and causes the claim to be unclear as to whether Applicant is only claiming cranberries or cranberries with other stripped fruit.

Further regarding claim 9, it is unclear whether “the shipping container” refers to the previously recited “shipping bin” or the truck, which ships the shipping bins to the processing plant. For the purpose of examination on the merits, it is assumed that “shipping container” is the same as “shipping bin.”

Regarding claim 10, it is unclear what the scope of claim 10 is because Applicant has failed to set forth any steps to further limit claim 9. Claim 10 merely seems to set forth two suggested benefits of the method in claim 9.

Regarding claim 11, it is unclear whether Applicant is trying to claim a structure or a method. Applicant's preamble state, "in a walk behind cranberry fruit harvester" but the body of the claims state "the improvement comprising a method of reducing picking damage to cranberry fruit." Since this claims is so unclear how the structure of a cranberry harvester can be improved by a method of use. Since this claims is unclear, for the purpose of examination on the merits it is assumed Applicant is claiming a method.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 9-10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 2,795,099 to Getsinger in view of U.S. Pat. No. to Behnke et al.

Getsinger et al. discloses a method of harvesting cranberries including:

- providing cranberry vines (Fig.2)
- providing means for stripping fruit from the cranberries vines (26) by operation of a walk-behind cranberry fruit harvester (Fig. 2)

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- providing means for conveying the fruit by conveyor means (22) from the picking head to an accessory loading conveyor (32) for loading the cranberries into a spaced apart associated shipping bin (44)

However, Getsinger et al. does not disclose the step of mechanically delivering the bin off the bog to a truck and mechanically delivering the shipping bin to a processing plant.

Like Getsinger et al., Behnke et al. discloses a harvester that collects material in a field that then must be transported out of the field. Unlike Getsinger et al., Behnke et al. teaches that it is known in art to mechanically deliver harvested products to a truck by means of a mechanical bin and then to truck those products to a processing plant.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the method of Getsinger et al. with the steps of mechanically delivering the bin of the bog to a truck and then mechanically delivering the shipping bin to a processing plant as in Behnke et al., in order to enable continuous harvesting without requiring the harvester to stop.

Response to Arguments

5. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. Applicant's claims are now rejected based on a combination of Getsinger et al. and Behnke et al. However, Applicant does argues that if Getsinger et al. and Behnke et al were applied it would be impossible to bodily incorporate the structure of Behnke et al. on the device of Getsinger et al. In response to applicant's argument, the test for obviousness is not whether the features of a secondary reference may be bodily

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incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Further, Applicant is claiming a method and not a structure.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Meredith C. Petravick whose telephone number is 571-272-6995. The examiner can normally be reached on M-T 8:00 a.m.- 5:00 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Meredith C Petravick
Primary Examiner
Art Unit 3671

December 1, 2005